

JONES K. MULLINAX

IBLA 78-286

Decided May 12, 1978

Appeal from a decision of the New Mexico State Office denying petition for reinstatement of automatically terminated oil and gas lease NM-16618.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment on the day it is due does not meet the reasonable diligence requirement.

2. Oil and Gas Leases: Reinstatement

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, simple forgetfulness or inadvertence are not justifiable excuses for delay in making the rental payment.

APPEARANCES: Jones K. Mullinax, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Jones K. Mullinax has appealed from a decision dated January 30, 1978, of the New Mexico State Office, Bureau of Land Management (BLM), denying his petition to reinstate oil and gas lease NM 16618, which had terminated by operation of law for failure to pay the advance annual rental. BLM did not receive the payment, due on September 1, 1977, until September 6, 1977. An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental

on or before the anniversary date of the lease. 30 U.S.C. § 188(b); 43 CFR 3108.2-1(a) (1976). A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1970).

In his petition to the State Office, appellant said that the notice (of payment due) was put in the wrong file and was not discovered until the day before termination. In his appeal he repeats that the rental was not mailed until September 1, 1977, due to human error and asks that his error be excused.

[1] Reasonable diligence normally requires that the lessee show he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in collection, transmittal and delivery of the mail. 43 CFR 3108.2-1(c). Mailing the rental payment in North Carolina on the due date for delivery in New Mexico is not an exercise of reasonable diligence. Richard L. Triplett II, 32 IBLA 369 (1977). Mailing in California 1 day before due date for delivery in Nevada is not an exercise of reasonable diligence.

[2] Nor has appellant established that the failure to pay timely was justifiable. Simple forgetfulness or inadvertence are not justifiable excuses. Lula Mai Martin, 27 IBLA 360 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

